

THE HON'BLE SRI JUSTICE A.GOPAL REDDY

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WRIT PETITION No.1379 of 1994

DATED: 28-02-2006

Between:

Upper India Steel Manufacturing and
Engg. Co. Ltd . . .Petitioner

And

A.P.S.E.B. and another . . .Respondents

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ORDER:

The question falls for consideration in this writ petition filed by the Upper India Steel Manufacturing and Engineering Company Limited who set up a mini steel plant at Gajulamandyam, near Tirupathi, Renigunta, having its Head Office at Ludhiana, is whether it is relieved of the obligation to pay minimum charges on account of failure in supply of electricity on release of second phase power demand of 12500 KVA over and above the existing demand of 5500 KVA.

The facts, which are necessary for disposal of the writ petition, are as under:

When the petitioner-company applied for a license to set up a mini steel plant, the Government of India insisted it to produce a feasibility certificate showing assurance from the State Government that the required power would be supplied to the petitioner-company. The petitioner obtained the said certificate on 11-12-1985 from the State Government stating that it would be able to get the supply of power to the extent of 30 MVA and voltage of supply of 132 KVA from the 1st respondent-Andhra Pradesh State Electricity Board (APSEB). On such submission of feasibility certificate, it was granted license by the Central Government and accordingly, set up a plant at Gajulamandyam near Tirupathi.

The 1st respondent assured to supply 30 MVA in a phased manner and to that effect, the petitioner entered into an agreement on 25-03-1988 *inter alia* undertaking to comply with the requirements under the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Rules framed there under.

Under clause 11 of the said agreement, the petitioner agreed to pay minimum charges even though no electricity is consumed for any reason or whatsoever and also the charges for electricity actually consumed are less than the minimum charges. As per requisition, the petitioner initially needs supply of 5.5 MVA and after 18 months, it is to be increased to 18 MVA and after two years, it is to be increased to 30 MVA, which is to be supplied at 132 KV. As per schedule, initial supply of 5.5 MVA was made on 13-08-1988 and 18 months thereafter, the Board agreed to supply 18 MVA i.e. addition of 12.5 MVA, but the same was not done. The Board informed that there is a delay in commissioning of 220 KV/132 EHT Sub-station at Renigunta, since the Central Government has not given the forest clearance for 220 KV Transmission Lines. Correspondence has taken place between the petitioner and the Board. Thereafter, the petitioner gave an undertaking on 26-02-1991 to avail the second phase power demand of 12500 KVA over and above the existing demand of 5,500 KVA (thus making a total demand of 18,000 KVA) immediately with the existing arrangements at the present

132 KV/33 KV-11 KV Sub-station at Renigunta and to pay all charges levied by the Board including monthly minimum charges on 18000 KVA. The petitioner categorically committed that

- i. we will adjust our load requirements in accordance with the prevailing power system conditions,
- ii. we will reduce, restrict or cut off altogether our drawal of this 12,500 KVA demand if such action is warranted by the Grid system and as per the advice of the Superintending Engineer (operation), Tirupati of the Board.
- iii. we will not claim any compensation whatsoever from the Board in the circumstances envisaged in sub-para (ii) above.

- iv. we will be availing power supply at satisfactory voltages when once the 220 KV new sub-station at Renigunta is commissioned.

We undertake to abide by all conditions of agreement dated 21st March, 1988 in addition to the stipulations contained in this undertaking.

After the said supply has been undertaken, the Board started sending certain bills based on minimum guarantee of 80% on 18 MVA. This prompted the petitioner to file the present writ petition, contending that taking advantage of the agreement, the Board irrespective of the supply of power and in spite of frequent load shedding being taken by it, with or without notice, has been sending the bills based on minimum guarantee of 80% on

18 MVA in violation of terms and conditions of supply. It is not open to the Board to prescribe any new terms and conditions to any particular consumer and it is open to the Board to classify the consumers and apply terms and conditions uniformly. So long as the petitioner belongs to HT category, there cannot be any distinction or discrimination between those belonging to the same category. The Board can collect minimum guarantee only if power is supplied, otherwise, it should be reduced proportionately to the extent of power supplied. But they cannot raise the bills for minimum charges.

Resisting the claim of the petitioner, APSEB filed a counter stating that though the Board was initially reluctant, in view of the persistent pursuance made by the petitioner for release of the second phase demand, the Board eventually relented and released the supply on petitioner's executing a written undertaking that the circumstances under which, it approached the Board for release of second phase demand. The petitioner availed the release of supply undertaking that it will not claim depreciation on the investments made by it, if the power is not released before 31-03-1991 and it would also forego other tax benefits around 3 crores of rupees. The petitioner also undertook to receive supply for a total demand of 18000 KVA with the existing arrangements at 132KV/33KV-11KV Sub-station at Renigunta and to pay all charges levied by the Board including monthly minimum charges on 18000 KVA. The petitioner committed that it would adjust load requirements in accordance with the system conditions and it would reduce, restrict or cut off all together its drawal of the additional demand of 12500 KVA, if such action is

warranted by the grid system and as per the advise of the Superintending Engineer, Operation APSEB, without claiming any compensation. Therefore, the petitioner is estopped from filing the writ petition objecting to the bills raised for minimum charges.

Learned counsel for the petitioner contends that once the Board expressed its inability to supply minimum required load of electricity, it is not entitled to raise the bills for minimum guarantee and are to be raised in proportion to the extent of power supply, since the supply of power is not in the hands of the petitioner. Though the petitioner agreed not to claim compensation for non-supply of power, what is sought in the writ petition is not the compensation which only presupposes of making a claim that they have been put to irreparable loss and injury due to non-supply of power and line remaining idle due to erratic supply of power and that the Board itself failed to supply 18000 KVA on release of second phase demand of supply.

In support of her submissions, she placed strong reliance on the judgments of the Apex Court in **NORTHERN INDIA IRON AND STEEL COMPANY v. STATE OF HARYANA**, **M/s.EASTERN ELECTRONICS (DELHI) LIMITED v. STATE OF HARYANA**, and **GRINDWELL NORTON LTD v. ANDHRA PRADESH STATE ELECTRICITY BOARD**.

Refuting the above submissions, the learned standing counsel for the Board would submit that the petitioner/consumer requested for release of second phase demand of 12.5 KVA and that as per the undertaking given by the petitioner in its letter, dated 05-03-1991, the petitioner/consumer was permitted to avail second phase power demand of 12.5 KVA with the existing arrangements at the present 132 KV Sub-station at Renigunta and to adjust the load requirements from time to time subject to not claiming any compensation from the Board, to abide by all the conditions of existing HT agreement, dated 21-03-1988, in addition to the stipulations contained in the undertaking, dated 26-02-1991, and to pay all charges including monthly minimum charges on 18000 KVA levied by the Board. He further submits that having given an undertaking by the petitioner that it would abide by the conditions mentioned in the agreement, it is not open for it to dispute that the bills were raised for minimum charges.

It was further argued that the statement filed along with the counter discloses that

duration of interruptions on the relevant dates is hardly 1 to 4 hours. Therefore, the Board is justified in raising the bills for minimum charges and the petitioner/consumer is liable to pay the same.

The Supreme Court in **NORTHERN INDIA's** case (1 supra), observed that there are two systems of tariffs namely, the flat rate system and the two-part tariff system. According to the two-part tariff system, under clause 4 (f) – **Force Majeure**, the consumer is entitled to a proportionate reduction of demand charges in the event of lock out, fire or any other circumstances considered by the supplier beyond the control of the consumer. Accordingly, the Supreme Court held that when the supply is governed by a two-part tariff system, it is chargeable on the actual amount of demand charge realisable from the consumer.

In **BIHAR STATE ELECTRICITY BOARD v. M/s. DHANAWAT RICE AND OIL MILLS**, initially, the High Court held that under Clause (1) of the agreement, it was incumbent for the Electricity Board to supply constant electricity and the consumer will be liable to pay annual minimum guarantee charges only if in spite of the fact that the Board supplies power as contemplated in the agreement and the consumer does not utilise the power, then the liability to pay annual minimum guarantee charges will arise and on this basis, quashed the demand.

On an appeal by the Board, the Supreme Court after considering the question that under the agreement arrived at between the consumers and the Bihar State Electricity Board, there is a clause for payment of minimum guarantee which indicates that even if the consumer does not consume electricity above the minimum guarantee, then it will be incumbent upon the consumer to pay charges for energy which is the annual minimum guarantee provided in the agreement pertaining to industrial units, and also clause 13 of the Agreement, which provides for the contingency and it provides for the failure on the part of the supplier and also failure on the part of consumer in the circumstances like strike, riot, fire, flood, explosion or act of God or any other reason beyond the control of either of the parties, held that the consumer is entitled only to a proportionate reduction of minimum guarantee bills.

The same is not the case on hand.

It is not in dispute that the Board expressed its inability for releasing second phase demand of 12.5 KVA sanctioned to it in B.P.Ms.No.875, dated 25-08-1990, as there is a delay in commissioning of 220 KV/132 EHT Sub-station at Renigunta, since the Central Government has not given the forest clearance for installation of 220 KV Transmission Lines. The consumer itself requested to avail second phase power demand of 12500 KVA over and above the existing demand of 5500 KVA from the KV Sub-station at Renigunta and to pay all charges levied by the Board including monthly minimum charges on 18000 KVA and adjust the load requirements in accordance with the prevailing power system conditions. The statement filed along with the counter showing particulars of power supply interruptions during August, 1991 to 1st January, 1993 and September, 1993 to 1st January, 1994 has not been disputed. Interruptions of power supply during the said period are only for a few hours in a day and in all, 47 hours.

This Court in **GRINDWELL NORTON's** case (3) supra, after considering the issue with regard to the same Renigunta Sub-station, held that every consumer whether consumes energy or not shall pay monthly minimum charges. These monthly minimum charges are payable even if no energy is consumed or even where the charges for the energy actually consumed are lower than the said minimum charges. It is further held that because of interruptions in, and curtailment of supply, or the alleged low voltages, the petitioner is relieved of the obligations under clause 11 or that it is entitled to say that it is liable only to pay for the energy actual consumed. Accordingly, allowed the writ appeal by dismissing the writ petition.

In view of the aforesaid discussion, I am of the considered opinion that once the petitioner/consumer has categorically undertaken and has not disputed the power supply with certain interruptions during the period as referred to above, it is not open for the petitioner to contend that it is not liable to pay the amounts demanded by the Board. Therefore, the writ petition is liable to be dismissed.

The Writ Petition is accordingly dismissed. There shall be no order as to costs.

(A.GOPAL REDDY, J)

28th FEBRUARY, 2006.

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